

In the Matter of:)
)
Application for)
Certification of the) Docket No. 99-AFC-2
THREE MOUNTAIN POWER PROJECT)
(OGDEN ENERGY, INC.))
_____)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBER PRESENT

William J. Keese, Chairman, Presiding Member

STAFF PRESENT

Edwin Bouillon, Jr., Hearing Officer

Dick Ratliff, Staff Counsel

Richard Buell, Project Manager

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Jim Crockett
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Hathaway Burney Ranch FLP
Claude Evans
Abe Hathaway

Dave Nelson
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ALSO PRESENT

Rita Cirulis
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ALSO PRESENT

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Leonard Stephens, Save Burney Falls

John Carlton

Terry Hufft

Wayne Pauley

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1 P R O C E E D I N G S

2 6:00 p.m.

3 PRESIDING MEMBER KEESE: Good evening.

4 This is a prehearing conference conducted by a
5 Committee of the California Energy Commission on
6 Ogden Energy's application for certification for
7 the Three Mountain Power Project.

8 Before we begin we're going to introduce
9 the participants. I'm Bill Keese, Presiding
10 Officer in this Committee. Commissioner Laurie
11 was not able to join us tonight. He's the Second
12 on this Committee.

13 Also here is Hearing Officer Ed
14 Bouillon. I will ask the applicant at this time
15 to introduce themselves, however you'd like to
16 introduce all yourselves.

17 MS. COTTLE: I'm Lisa Cottle. I'm with
18 the lawfirm White & Case and we are counsel to
19 Three Mountain Power, the applicant in this
20 proceeding. To my right is Mike Zischke; Mike is
21 with the lawfirm Landels, Ripley & Diamond. They
22 are special environmental counsel to Three
23 Mountain Power.

24 And on my left is Les Toth who is the
25 Project Manager. And on Les' other side is Marty

1 McFadden; Marty is Vice President of Three
2 Mountain Power. On the other side of Marty is Ann
3 MacLeod, who's also with White & Case.

4 PRESIDING MEMBER KEESE: Thank you. And
5 staff, Mr. Buell.

6 MR. BUELL: My name is Rick Buell. I'm
7 the Project Manager for the Energy Commission
8 Staff. To my left is Dick Ratliff, counsel to the
9 staff.

10 PRESIDING MEMBER KEESE: Thank you. And
11 then the intervenors. CURE.

12 MR. WOLFE: My name is Mark Wolfe with
13 the lawfirm of Adams, Broadwell, Joseph and
14 Cardozo, here representing CURE.

15 PRESIDING MEMBER KEESE: Thank you,
16 Mark.

17 Burney Resource Group, Marcella.

18 MS. CROCKETT: Marcie Crockett for
19 Burney Resource Group. On my left is Jim Crockett
20 with the Burney Resource Group.

21 PRESIDING MEMBER KEESE: Do you have any
22 others with Burney? Is that --

23 MS. CROCKETT: Yes. Do you want me to
24 introduce the other members?

25 PRESIDING MEMBER KEESE: If you have

1 others with Burney Resource Group, yes.

2 MS. CROCKETT: Okay. Behind me I have
3 Lynn Miller who's with the Burney Resource Group.
4 And Mary Humphries.

5 PRESIDING MEMBER KEESE: Humphries, the
6 first name was?

7 MS. CROCKETT: Mary.

8 PRESIDING MEMBER KEESE: I'm sorry,
9 she'll take care of it.

10 MS. CROCKETT: Let me clarify that Debi
11 wanted us to keep this mike close to all the mikes
12 as a recording mike. And we have other members of
13 the Resource Group here. That would be Mary
14 Humphries, Lynn Miller, Bob Murray, Jim Crockett.

15 PRESIDING MEMBER KEESE: Thank you. For
16 Hathaway Burney Ranch? Mr. Evans?

17 MR. EVANS: That's me. I'm here.

18 (Laughter.)

19 PRESIDING MEMBER KEESE: The California
20 Department of Parks and Recreation?

21 MR. NELSON: Yes, Dave Nelson,
22 representing California Department of Parks and
23 Recreation.

24 PRESIDING MEMBER KEESE: Thank you.

25 TANC? Our Public Advisor is not here this

1 evening, but Mr. Bouillon will be filling in and
2 will make a statement later.

3 Agencies who are present: The Shasta
4 County Air Quality Management District.

5 MR. KUSSOW: Michael Kussow, Air
6 Pollution Control Officer for Shasta County. And
7 on my right is Rita Cirulis, Senior Air Pollution
8 Control Inspector.

9 PRESIDING MEMBER KEESE: Thank you. The
10 California Regional Water Quality Control Board.
11 Do we have any other agencies present?

12 MR. MURRAY: I'm Bob Murray; I'm also
13 from the Mosquito Abatement District here. BBMAD,
14 Bob Murray.

15 PRESIDING MEMBER KEESE: Can you speak
16 into a mike, please?

17 MR. MURRAY: Bob Murray from the Burney
18 Basin Mosquito Abatement District.

19 PRESIDING MEMBER KEESE: Any other
20 agencies?

21 MR. SUPPA: Bill Suppa, Burney Water
22 District.

23 PRESIDING MEMBER KEESE: Thank you. Any
24 members of the public who care to identify
25 themselves? This will not preclude your

1 participation when we come to public comment.

2 MR. CARLTON: I'm John Carlton, Carlton
3 Enterprises, a neighbor of Burney Mountain Power,
4 and a concerned citizen.

5 PRESIDING MEMBER KEESE: Thank you.

6 MR. LONGSTRETH: Also Bob Longstreth;
7 I'm with Gray Cary Wate & Freidenrich, and I'm
8 here representing Fred Carroll, on my left, who
9 has a petition that's pending to intervene in the
10 case.

11 HEARING OFFICER BOUILLON: Do you have a
12 copy of that petition with you?

13 MR. LONGSTRETH: I don't. It was filed
14 electronically on Monday, and I mailed out. I
15 don't have a hard copy of it.

16 PRESIDING MEMBER KEESE: Thank you, we
17 were aware that something was there, but we have
18 not received it.

19 MR. LONGSTRETH: Okay. I think CURE is
20 giving you a hard copy of it.

21 PRESIDING MEMBER KEESE: Thank you.
22 Okay, that's the introductions.

23 Ogden Three Mountain Power, LLC, filed
24 it's application for certification in March of
25 1999. The project is a 500-megawatt combined-

1 cycle facility that will be built by Three
2 Mountain Power on an existing 10.2-acre industrial
3 site adjacent to the Burney Mountain Power
4 facility, approximately one mile northeast of the
5 town of Burney.

6 On January 19, 1999 the Committee issued
7 an amended notice scheduling this prehearing
8 conference. That should be 2000. We'll get into
9 the next millennia pretty soon. That's on January
10 19, 2000, we issued a notice scheduling this
11 prehearing conference.

12 In response to this notice the
13 applicant, the staff and several intervenors filed
14 prehearing conference statements in which they
15 indicated that certain topic areas may not yet be
16 complete, including air quality, alternatives,
17 facility design, transmission system engineering,
18 land use, water quality, public health, biological
19 resources and visual resources.

20 The preliminary staff assessment, which
21 we'll call PSA, which was issued on December 1st
22 as to part one, and December 19th as to part two,
23 states that staff's analysis on air quality cannot
24 be completed until the air district's final
25 determination of compliance, and a valid emissions

1 offset package are available for staff review.

2 The purpose of today's prehearing
3 conference is to assess whether the parties are
4 ready for evidentiary hearings, to identify the
5 areas of agreement or dispute, and to discuss the
6 procedures that are necessary to conclude the
7 certification process.

8 We will also identify and discuss, if
9 possible, any final petitions to intervene. In
10 this regard the Committee will ask the parties to
11 present their respective positions on the topic
12 issues, and I will ask that we place Mark's in the
13 appropriate boxes over here, to discuss the filing
14 dates for testimony and other evidentiary
15 documents, and to plan for briefing and comment
16 periods.

17 We will also want to hear from agency
18 representatives on the status of their respective
19 reviews of this project.

20 The AFC process is a public proceeding
21 in which members of the public and interested
22 organizations are encouraged to actively
23 participate and express their views on matters
24 relevant to the proposed project. We're
25 interested in hearing from the community on any

1 aspect of the proposed project.

2 At this time I'll ask Mr. Bouillon to
3 explain the role of the Public Advisor in this
4 process.

5 HEARING OFFICER BOUILLON: As a
6 Committee, the California Energy Commission is
7 interested in hearing from the community on all
8 aspects of the proposal for certification. In
9 that regard the Public Advisor has been up here
10 several times over the past year meeting with
11 community groups, community leaders and
12 individuals and consulting with intervenors and
13 possible intervenors to explain the process to
14 them.

15 And from the feedback I've received
16 apparently she's done a pretty good job of that.
17 I think she was at the workshop today, and I
18 believe she had a meeting with the intervenors
19 prior to the workshop.

20 And at anytime that any member of the
21 public or any intervenor has any question about
22 the process or the proceedings they are free to
23 contact her by telephone. And her number is
24 readily available. And if for some reason you
25 don't feel like you can get her, you can get me.

1 And she's in her office, it's next door to mine.

2 And I think she has explained this well
3 enough to -- I recognize most of the faces here,
4 so I don't think I need to go into any detail
5 about what efforts she's undertaken in this
6 community.

7 PRESIDING MEMBER KEESE: Thank you. Is
8 everybody clear on that?

9 Okay, the schedule. The Committee
10 recognizes that the applicant is very concerned
11 about meeting the 12-month schedule. We are also
12 concerned that the Committee has a complete record
13 available for review at the conclusion of
14 evidentiary hearings that are now scheduled to
15 begin very late in February or in early March.

16 For this reason the Committee is willing
17 to trail the hearing dates for a limited number of
18 topics pending receipt of necessary information or
19 documents such as the final determination of
20 compliance from the air district. The parties
21 should be aware of this contingency as we discuss
22 the schedule.

23 We're now going to turn to our topic
24 areas and we'd ask you to identify areas, topics
25 which are complete and uncontested, which are not

1 complete, and which topics you believe are subject
2 to adjudication.

3 We will ask the parties and intervenors
4 to address each topic and identify whether there
5 are contested matters or other issues that they
6 wish to adjudicate.

7 We'd also like you to indicate the
8 approximate earliest date when you will be
9 prepared for hearing on each of these areas.

10 We're going to begin with the
11 applicant's presentation. Following the applicant
12 we'll hear from staff, then the intervenors,
13 agencies, and members of the public.

14 We're going to try to keep this
15 informal. The adjudication phase which will be
16 the next step is the trial, at which we will be
17 presenting evidence. This is not a trial, we're
18 not presenting any evidence today. We're going to
19 determine which issues are going to trial.

20 So we'll keep it informal and we'll
21 provide time at the end of each presentation for
22 the parties to ask questions and otherwise clarify
23 issues.

24 Any questions on the process that we're
25 undergoing here in this prehearing process?

1 Okay, Lisa.

2 MS. COTTLE: The applicant believes that
3 all of the topics that are addressed in the first
4 part of the staff's final assessment which was
5 issued on January 24th are complete at this time
6 and ready to proceed to hearings, with the
7 exception of biological resources. We understand
8 that staff is continuing to review the area of
9 biological resources and that that review is
10 closely tied to staff's continuing analysis of
11 water resources issues.

12 Therefore, we recommended in our
13 prehearing conference statement that biological
14 resources be deferred to phase two of this
15 proceeding so that it can be heard at the same
16 time as the water issues.

17 Second of all, we don't anticipate at
18 this time any dispute with staff regarding any of
19 the topics that are ready for hearing at this
20 time. And we made that point in our prehearing
21 conference statement.

22 I would point out that since the time we
23 filed the prehearing conference statement we've
24 had an opportunity to conduct a more detailed
25 review of the part one final staff assessment, and

1 we have identified a few areas of concern where we
2 think we need more clarification or a possible
3 rewording of some of the conditions.

4 And we've made our views on that known
5 to staff. And we believe at this point that we
6 will be able to work out all of those issues
7 without requiring adjudication.

8 And this morning at the staff workshop
9 we discussed holding a workshop to discuss the
10 area of compliance monitoring and to work out some
11 more specific milestones and dates for some of the
12 conditions.

13 So we're hopeful that we can work out
14 all of our remaining concerns in that way.

15 As to the other parties we understand
16 that there have been areas in the final staff
17 assessment part one that have been identified as
18 being in dispute. However, we believe that all
19 the issues and concerns that have been raised can
20 be addressed through testimony and hearings, and
21 that there's no need for further analysis at this
22 time, or for any delay in the submission of
23 testimony on any of those topics. And we can
24 address that more specifically as we go through
25 each topic area.

1 PRESIDING MEMBER KEESE: Thank you. How
2 early are you ready for testimony?

3 MS. COTTLE: We're ready for testimony
4 on all phase one topic areas with the exception of
5 biological resources on February 18th; propose to
6 file testimony that date.

7 And we had in our prehearing conference
8 statement asked for an opportunity to file
9 rebuttal testimony. However, after giving some
10 more thought to that issue and after seeing the
11 specific areas that were identified by other
12 parties, we don't believe that rebuttal testimony
13 is necessary.

14 And we therefore propose to proceed to
15 hearing within a couple weeks or so after the
16 February 18th filing date.

17 PRESIDING MEMBER KEESE: Okay, staff.

18 MR. BUELL: I believe staff agrees with
19 the applicant largely. There's two items that I
20 think that we need to bring to the Committee's
21 attention. And those are regarding the topics of
22 public health and also the topic of visual
23 resources.

24 Today we learned that CURE will have
25 significant comments on the topic of public health

1 and we have not seen those yet. There's a
2 possibility that staff may feel that it's
3 necessary to augment its testimony to respond to
4 those comments that CURE is raising.

5 On visual resources I understand my
6 staff has identified that we all have substantial
7 errata to that testimony. I don't believe it's
8 going to change our conclusions at this point in
9 time, but to be fair to other parties, it may be
10 necessary to delay hearings on those two topics to
11 allow staff to re-issue its testimony and allow
12 parties to review that prior to the hearing.

13 PRESIDING MEMBER KEESE: Thank you.
14 And, timing?

15 MR. BUELL: I think we're ready on all
16 the phase one, or part one sections at this time
17 with the exceptions of possibly visual resources
18 and public health.

19 PRESIDING MEMBER KEESE: Thank you.
20 Okay, we go to the intervenors and we'll start
21 with CURE. Mr. Wolfe.

22 MR. WOLFE: Thank you. We are ready
23 except on the following: Project description,
24 public health --

25 PRESIDING MEMBER KEESE: No, let's start

1 with --

2 MR. WOLFE: I'm sorry.

3 PRESIDING MEMBER KEESE: Do we want to
4 start with ready or do we want to start with which
5 ones you believe have to be adjudicated?

6 HEARING OFFICER BOUILLON: That's what
7 he started with.

8 PRESIDING MEMBER KEESE: Okay.

9 MR. WOLFE: The number that we feel to
10 be adjudicated are relatively few, believe it or
11 not.

12 PRESIDING MEMBER KEESE: Okay.

13 MR. WOLFE: So we are ready on all
14 except the project description, public health,
15 waste management, air quality, which is phase two,
16 soil and water quality, biological resources and
17 alternatives.

18 In the prehearing conference statement
19 we had indicated that we did not feel that
20 facility design was ready, but in light of the
21 discussion at the workshop today in which, if I
22 understood correctly, the discussion of the
23 feasibility of dry cooling would be discussed in
24 the water quality mitigation discussion, we can --
25 assuming that's true we can go ahead and say that

1 facility design is ready.

2 HEARING OFFICER BOUILLON: Mr. Wolfe, if
3 I might ask you a question. With regard to public
4 health and waste management and the biological
5 resources and alternatives, for that matter, are
6 all of your issues in those topic areas related to
7 air and water?

8 MR. WOLFE: Public health is related to
9 air, particularly hazardous, a health risk
10 assessment for hazardous air contaminants, toxic
11 air contaminants. Waste management, yes. On
12 biological resources, we, on Monday, I believe,
13 are going to docket a rÇsumÇ of a bird expert who
14 we haven't actually finalized arrangement with, so
15 it would be premature for me to disclose his name,
16 to talk about impacts from the reconductoring on
17 birds, particularly listed species.

18 And we, let's see, on the water quality
19 issue, as I mentioned, we were going to address an
20 alternatives analysis of a dry cooling option,
21 which yes, is related to water quality certainly.

22 So, does that answer the question?

23 HEARING OFFICER BOUILLON: Yes, it does.

24 MR. WOLFE: Okay.

25 PRESIDING MEMBER KEESE: Yes, I think

1 we'll come back to this after we've heard from all
2 the intervenors. I think it will be beneficial
3 for everybody, particularly since we have a broad
4 number of intervenors, to come down with a
5 specific list of items to be adjudicated.

6 And I believe that a number of the ones
7 you've listed, which, since you've listed, will be
8 adjudicated, can be classified under either air or
9 water. So they will remain adjudicated issues,
10 but will try to close up issues such as public
11 health, and we'll move the public health aspect of
12 air emissions to the air.

13 MR. WOLFE: That sounds perfectly
14 reasonable. That sounds essentially what we did
15 this morning with visual resources and dry
16 cooling. And certainly, the fewer separate
17 hearings we can have, the better.

18 PRESIDING MEMBER KEESE: Okay.

19 MR. RATLIFF: Commissioner, if I may, I
20 think that makes sense, but I also wanted to -- it
21 occurs to me that the issue of dry cooling cuts
22 across the other issue areas besides water,
23 itself.

24 I mean it could require, for instance,
25 the staff that normally does power plant

1 efficiency or facility design --

2 PRESIDING MEMBER KEESE: Well, what I --

3 MR. RATLIFF: -- can also testify.

4 PRESIDING MEMBER KEESE: Okay, we'll get
5 through our checklist, and then we'll come back
6 and figure out if we're -- if we're going to have
7 these issues, let's be comprehensive and make sure
8 we have them all. Even if we list them under air
9 and water, let's make sure we have all of them.

10 MR. RATLIFF: It just occurred to me
11 that we neglected to say anything about this
12 because it actually hadn't occurred to me, to the
13 extent that you go into that issue it's not the
14 same witnesses. And I'm just pointing that out
15 that you may -- we may have to consider something
16 a little bit more elaborate than what we thought
17 about with regard to that issue.

18 PRESIDING MEMBER KEESE: Okay, thank
19 you. Burney Resource Group.

20 MS. CROCKETT: Under areas of
21 adjudication we had initially listed public
22 health, waste management, land use, visual
23 resources, which we now, after talking today, have
24 felt that that could be put under air and water.

25 And so those areas, as far as Burney

1 Resource Group is concerned, for adjudication
2 purposes will be dealt with in their relationship
3 to air and water quality.

4 Noise, we still have an area there that
5 needs to be adjudicated. And facility design
6 would also come under air and water, because that
7 has to do with whether or not the facility design
8 is changed because of air and water.

9 The other area that hasn't been touched
10 that would require adjudication, and as we stated
11 in our prehearing conference, a lot of this
12 depends on TANC's interaction with the
13 transmission system engineering. So that would be
14 an area that we'd initially been very concerned
15 about, and then there appears to be new
16 information raised.

17 PRESIDING MEMBER KEESE: Is TANC here
18 yet? I had expected that issue to be raised by
19 TANC, also.

20 MS. CROCKETT: And we're going to be
21 following their lead. They have the resources.
22 We've already discussed the system engineering.
23 You're well aware of all the stuff that went on
24 with that.

25 And apparently some of the areas within

1 system engineering are being raised, the same
2 issues are being raised again by TANC. So we did
3 indicate in our prehearing conference that they
4 could be eliminated after conferring with their
5 system design and engineers. But by the same
6 token they could be raised even to a more degree.

7 PRESIDING MEMBER KEESE: Thank you. I
8 think we'll plan to leave it as a contested issue.

9 MS. CROCKETT: Okay. So at this stage
10 we're still, areas of adjudication would be in the
11 second part under the air quality, alternatives,
12 biological resources and soil and water resources.

13 PRESIDING MEMBER KEESE: Thank you.
14 Hathaway Burney. They're not here. Mr. Evans,
15 did you wish to add any or -- feel free to
16 second--

17 MR. EVANS: No, I've just got one thing.
18 I seem to be the only one that's concerned with
19 cultural resources, so I'll withdraw that and just
20 go with air and soil and whatever else.

21 PRESIDING MEMBER KEESE: Thank you.
22 Appreciate that. Mr. Nelson for the Department of
23 Parks and Rec.

24 MR. NELSON: Yeah, actually since he
25 just mentioned cultural, I'm kind of like him. My

1 concerns, I would hope that the Native American
2 community in this area would have been more
3 involved in this process, and they really haven't
4 been.

5 I would just mention that Burney Falls,
6 as an example, is considered a sacred site. We
7 manage it as such for the Native American
8 population. So there may be some cultural issues
9 that come up when we're discussing the effects
10 this has on Burney Falls.

11 So, that's my only comment. And, again,
12 I'm not really the best person to make that
13 comment. It would be better coming from, again,
14 the Native American people.

15 But I know we have to manage it as such,
16 so, you know, there may be some -- but, again, I'm
17 not really the proper one to make --

18 PRESIDING MEMBER KEESE: Well, and
19 you're correct. And since we have no intervenor
20 raising it, it will probably not be an issue that
21 will be litigated.

22 MR. NELSON: Okay.

23 PRESIDING MEMBER KEESE: If we're not
24 going to have an attorney bringing on an expert
25 witness, we're not --

1 MR. NELSON: I don't plan to, so that's
2 a --

3 PRESIDING MEMBER KEESE: Right. But if
4 they choose to come in and comment as a member of
5 the public, the Committee will take that into
6 consideration, but it's not going to be an
7 adjudicated issue.

8 MR. NELSON: And that's fine with me. I
9 just wanted to let you know there was that, you
10 know, that it might be raised.

11 HEARING OFFICER BOUILLON: I might add
12 for everybody's information that our Public
13 Adviser, Roberta Mendonca, has had extensive
14 conversations with the Native American groups in
15 this area. And the fact that they have not
16 intervened indicates to me there's not a problem,
17 or that their problems are being satisfactorily
18 resolved outside the process here.

19 MR. NELSON: And that's fine with me.
20 I'm satisfied with that.

21 PRESIDING MEMBER KEESE: Thank you.

22 MR. ZISCHKE: With the Committee Members
23 permission, I'm not sure the chart is right there.

24 MS. COTTLE: think some of your checks
25 might be in the wrong place.

1 MR. BUELL: I made a small error --

2 (Laughter.)

3 MR. BUELL: I checked the entire box for
4 Parks and Rec and for Burney Resource Group,
5 please note that.

6 (Laughter.)

7 MR. ZISCHKE: I believe the issues you
8 checked were issues they said were air and water -
9 -

10 MS. COTTLE: Yeah, and Burney Resource
11 Group I don't believe intended that all that you
12 checked ended up checked. Can you --

13 MS. CROCKETT: No.

14 MS. COTTLE: Yeah, you --

15 (Parties speaking simultaneously.)

16 PRESIDING MEMBER KEESE: We got to get
17 near a mike.

18 MS. COTTLE: Off the record.

19 (Parties speaking simultaneously.)

20 MR. ZISCHKE: I'll say it. I don't
21 believe that all the items that were checked there
22 were intended to be checked by the Burney Resource
23 Group.

24 PRESIDING MEMBER KEESE: The audio
25 record is not going to record those checks very

1 well, I don't believe. So we will make sure that
2 the --

3 MS. COTTLE: Someone bring the white-
4 out.

5 PRESIDING MEMBER KEESE: We will make
6 sure that the graph up here gets accurate.

7 MS. CROCKETT: Okay, for recording
8 purposes, the Burney Resource Group, under public
9 health, waste management, land use, and visual
10 resources need to be removed from areas of
11 adjudication. And that we have agreed that these
12 will be resolved under air and water.

13 Have I got that fairly clear?

14 PRESIDING MEMBER KEESE: I think we got
15 it.

16 HEARING OFFICER BOUILLON: Is that true
17 of facility design, also?

18 MS. CROCKETT: That I had to move I
19 think down a bit further. Facility design was
20 only checked because we thought that if there was
21 a change in design due to cooling or waste
22 handling that that would have to be checked.

23 So those would, as long as we are able
24 to talk about those topics under air and water
25 quality, we would remove from adjudication

1 facility design, visual resources, land use, waste
2 management and public health.

3 MR. RATLIFF: Marcie, if I may, I'm
4 confused now, because I thought actually -- I
5 wonder if we confused you. The confusion I'm
6 suffering is that I thought that your concern in
7 public health was with the modeling of the toxic
8 air contaminants.

9 MS. CROCKETT: Right.

10 MR. RATLIFF: Is that correct?

11 MS. CROCKETT: Won't that be under air
12 quality?

13 MR. RATLIFF: No, it'll be under public
14 health.

15 MS. CROCKETT: So, --

16 MR. RATLIFF: But it occurred to me we
17 may have confused you on that matter by telling
18 you that if we put it back to the second round of
19 hearings those two issues would be heard at the
20 same time.

21 MS. CROCKETT: Okay, --

22 HEARING OFFICER BOUILLON: I think we're
23 just going around the same circle different ways.
24 The issue they have with public health, while it
25 is a public health issue, and I don't mean to say

1 it's not, is an issue over the air. It is not an
2 issue over the spread of some other disease that
3 might affect public health.

4 MR. RATLIFF: Yes, but it's an issue
5 that has to do with the witness in public health
6 who does the toxic air contaminant hazard risk
7 assessment.

8 HEARING OFFICER BOUILLON: I understand
9 that, but if we have an all-encompassing hearing
10 on air quality that involves public health issues
11 we're talking about air quality as it affects the
12 public health.

13 MR. RATLIFF: Well, let me just clarify.
14 We basically in our testimony, public health has
15 to do with criteria pollutants -- I mean, I'm
16 sorry, air quality has to do with criteria
17 pollutants, and public health has to do with the
18 toxic contaminant issues.

19 And I believe that what we discussed
20 today at the workshop, the issue that Burney
21 Resource Group was expressing an interest in
22 adjudicating had to do with the modeling for toxic
23 air contaminants.

24 These are questions that would be
25 addressed to the public health witness and the

1 modeling that he did. And that's why I'm trying
2 to get it clarified. It won't be addressed to the
3 air quality person who did criteria pollutants.

4 HEARING OFFICER BOUILLON: I think
5 you're talking about different witnesses as
6 opposed to different issues.

7 MR. RATLIFF: Well, we have two
8 different witnesses for these two different
9 issues. And the issue that she's interested in is
10 the one that comes under public health. And I'm
11 just trying to clarify that.

12 PRESIDING MEMBER KEESE: And we move it
13 to air. And move your witness along with it.

14 (Laughter.)

15 MR. RATLIFF: Okay, I won't say any
16 more.

17 HEARING OFFICER BOUILLON: It seems to
18 me that we could have that witness available for
19 the hearings on air.

20 MR. RATLIFF: Well, I thought what we
21 were considering doing here was moving the -- oh,
22 okay, you're basically calling it all the same
23 thing then?

24 HEARING OFFICER BOUILLON: Yes.

25 MR. RATLIFF: Am I correct? You're

1 putting on both our witnesses and you're calling
2 it air.

3 HEARING OFFICER BOUILLON: Right.

4 MR. RATLIFF: Okay, I'm sorry, I
5 didn't --

6 PRESIDING MEMBER KEESE: We're trying to
7 do that with another one or two here before we're
8 done.

9 MR. RATLIFF: Okay.

10 PRESIDING MEMBER KEESE: So that we wind
11 up with a discrete list of topics. Okay?

12 MR. RATLIFF: Okay.

13 MS. CROCKETT: So what is Burney
14 Resource Group doing?

15 HEARING OFFICER BOUILLON: The way you
16 thought you understood it is the way I think I
17 understand it, too.

18 PRESIDING MEMBER KEESE: Okay, we're
19 going to take it up under air.

20 MS. CROCKETT: Okay.

21 PRESIDING MEMBER KEESE: Toxics will be
22 there.

23 MS. CROCKETT: Is counsel comfortable
24 with this procedure?

25 (Laughter.)

1 MS. CROCKETT: I'm feeling a little
2 uncomfortable between --

3 PRESIDING MEMBER KEESE: Well, let's
4 give counsel another crack after we deal with
5 another subject or two and we'll see if counsel
6 is --

7 MR. RATLIFF: At this point I'm just
8 sorry I said anything, so.

9 (Laughter.)

10 PRESIDING MEMBER KEESE: I see Mr.
11 Hathaway has come in. Is that good enough, or do
12 you need to identify him more than that?

13 We have Mr. Hathaway here. What we're
14 going through is discussing which issues are going
15 to be adjudicated, and we wound up with a series
16 that are going to be adjudicated. We would give
17 you an opportunity to suggest or list items that
18 would like to be adjudicated. If you'd like a
19 moment to talk with somebody --

20 MR. HATHAWAY: No, I'm fine.

21 PRESIDING MEMBER KEESE: Okay.

22 MS. CROCKETT: Do I need to complete the
23 adjudicated areas that we were going to do in the
24 first part?

25 HEARING OFFICER BOUILLON: No, I think -

1 - I understood what you wanted to say.

2 MS. CROCKETT: Okay, thank you.

3 PRESIDING MEMBER KEESE: Okay. Yeah,
4 we're going to go to the members of the public,
5 and then we will go first to our next potential
6 intervenor, since we really haven't received it
7 quite formally.

8 MR. LONGSTRETH: And I have -- have you
9 received the prehearing statement? We had filed
10 that yesterday. I can give you a copy --

11 HEARING OFFICER BOUILLON: Didn't get
12 that, either.

13 MR. LONGSTRETH: -- of that. Okay.

14 PRESIDING MEMBER KEESE: But this is the
15 time at which we take comments from the members of
16 the public as to the issues to be adjudicated, so
17 feel free to give us a presentation.

18 MR. LONGSTRETH: And our position is
19 reflected in the prehearing statement, I think is
20 in accordance with what seems to be the consensus
21 here. We think that the air quality, biological
22 resources, alternatives, and soil and water
23 resources area are not ready. They're going to be
24 deferred in part two.

25 The issues that we did have with respect

1 to the part one issues, and it's primarily the
2 toxic air contaminant issue. We understand it's
3 going to be addressed with testimony as part of
4 the air quality hearings in part two. And that's
5 what we think is the reasonable way to handle it.

6 PRESIDING MEMBER KEESE: Okay, thank
7 you. Back to Mr. Nelson, Parks and Rec.

8 MR. NELSON: Yeah, I wasn't really
9 finished.

10 PRESIDING MEMBER KEESE: I'm sorry.

11 MR. NELSON: I'd just made a quick
12 comment on cultural and that's as far as -- we
13 went off in another direction, so -- my initial, I
14 initially said that there were still some issues
15 in land use and visual that we were concerned
16 with. I understand that those can also be covered
17 under -- they are directly related to water use
18 and its impacts.

19 So as long as, you know, there's
20 assurances that we could cover specific visual
21 issues and land use issues as they pertain to, you
22 know, water and the Falls, you know, I'm happy
23 with putting those off for water, also.

24 PRESIDING MEMBER KEESE: The water would
25 contain the implications of what happens when you

1 use water, yes.

2 MR. NELSON: That's correct.

3 PRESIDING MEMBER KEESE: Right.

4 MR. NELSON: And other than that I'm --
5 those are all second phase issues.

6 PRESIDING MEMBER KEESE: Thank you. Do
7 we have any members of the public who -- the issue
8 now is are there any others that you feel should
9 be litigated. I think we pretty well have our
10 list. Are you okay, Mr. --

11 I have a particular comment. Who put in
12 alternatives?

13 MR. WOLFE: I think we did.

14 PRESIDING MEMBER KEESE: All right, what
15 aspect of alternatives -- are you talking about
16 the -- let me just say if somebody's talking about
17 the potential of dry cooling versus wet cooling I
18 don't think we have to call that alternatives.

19 But what do you mean by alternatives?

20 MR. WOLFE: It's alternative power plant
21 cooling and wastewater disposal methods. So --

22 PRESIDING MEMBER KEESE: Percolation.

23 MR. WOLFE: Exactly, and they therefore
24 could be brought presumably down into water and --
25 water, period.

1 PRESIDING MEMBER KEESE: That was my
2 feeling. Is that --

3 MR. WOLFE: I mean notwithstanding
4 counsel's concerns --

5 (Laughter.)

6 PRESIDING MEMBER KEESE: Is that --
7 alternatives is a nice open, wide open word that
8 in my mind lends to some confusion. If we have a
9 very specific thing that we're considering, let's
10 make it specific and list it as one of the issues
11 to be adjudicated.

12 MS. CROCKETT: Okay, the areas of
13 adjudication within alternatives again refers to
14 water, and we listed the alternatives to dry
15 cooling versus wet-dry cooling versus zero
16 discharge.

17 PRESIDING MEMBER KEESE: Okay, thank
18 you.

19 MR. NELSON: And I would agree with
20 that, could be handled with the water --

21 PRESIDING MEMBER KEESE: Mr. Nelson
22 agrees with that.

23 MS. CROCKETT: May Burney Resource make
24 one other comment? We also have a member of our
25 group that wanted clarification that waste

1 management or waste handling would be under the
2 water phase.

3 PRESIDING MEMBER KEESE: You're talking
4 about the percolation ponds? Is that what we're
5 talking about?

6 MS. CROCKETT: Yes. Discharge.

7 PRESIDING MEMBER KEESE: Discharge.

8 MS. CROCKETT: Okay, thank you.

9 PRESIDING MEMBER KEESE: Yes, it would.
10 Are we taking waste management off the list then?

11 HEARING OFFICER BOUILLON: With the
12 exception of the percolation ponds.

13 PRESIDING MEMBER KEESE: With the
14 exception of the percolation pond, which will be
15 dealt with under water?

16 MS. CROCKETT: Burney Resource Group
17 says yes on that.

18 PRESIDING MEMBER KEESE: Is there a
19 second check there? Is that a -- CURE? Is CURE
20 okay with that?

21 MR. WOLFE: Yeah.

22 PRESIDING MEMBER KEESE: Okay. Lisa for
23 the applicant.

24 MS. COTTLE: That sounds fine with us,
25 that's what we would suggest. Actually, the

1 comment that I wanted to make, I just didn't want
2 to lose my opportunity. I would like to make one
3 comment about transmission system engineering if
4 now is a good time?

5 PRESIDING MEMBER KEESE: No. No,
6 let's --

7 (Laughter.)

8 MS. COTTLE: Okay.

9 PRESIDING MEMBER KEESE: Sure.

10 MS. COTTLE: Can I make it later?

11 PRESIDING MEMBER KEESE: Sure, now's a
12 good time. I was trying to take some items off
13 the --

14 MS. COTTLE: Okay, that's fine, I can
15 wait, as long as I --

16 PRESIDING MEMBER KEESE: Do we have --
17 are we putting -- I don't have anything in writing
18 in front of me so I can't remember exactly what --

19 SPEAKER: It's not accurate, so --

20 (Parties speaking simultaneously.)

21 PRESIDING MEMBER KEESE: Can we --

22 HEARING OFFICER BOUILLON: My consensus
23 seems to be, if I might summarize all of this, is
24 that no one has any issues that are unrelated to
25 air and water.

1 MR. WOLFE: Biology.

2 HEARING OFFICER BOUILLON: And biology.

3 But mostly it's the effect of the air and water on
4 the biology --

5 MR. WOLFE: And the transmission line on
6 the biology --

7 HEARING OFFICER BOUILLON: And
8 transmission system engineering.

9 PRESIDING MEMBER KEESE: Do you still
10 have a problem with project description?

11 MR. WOLFE: No.

12 PRESIDING MEMBER KEESE: Okay.

13 MS. CROCKETT: Burney Resource Group has
14 transmission engineering and noise that are not
15 related --

16 PRESIDING MEMBER KEESE: Correct, noise
17 is not related. Okay, and transmission.

18 HEARING OFFICER BOUILLON: Visual --

19 PRESIDING MEMBER KEESE: Lisa, on
20 transmission engineering.

21 MS. COTTLE: Right. We had expected
22 that TANC would be here, but we did have a
23 response to their prehearing conference statement
24 and their petition to intervene that we'd like to
25 bring to the Committee's attention.

1 First of all, we don't agree with TANC
2 that a detailed facility study is needed in order
3 to proceed to hearing on this subject. We filed
4 the preliminary facility study that was prepared
5 by PG&E, and we've also submitted the Independent
6 System Operator's preliminary interconnection
7 approval.

8 And we believe that that evidence is
9 sufficient to proceed to hearings at this time.
10 And we also understand from staff's final staff
11 assessment that someone from the ISO will be
12 present at the hearings to offer their conclusions
13 and recommendations.

14 So we just want to make sure that it's
15 clear that we don't agree with TANC that there's
16 any need for delay, to wait for the detailed
17 facility study. And we believe that's consistent
18 with the way it's been treated in other cases.

19 PRESIDING MEMBER KEESE: Thank you. And
20 I would -- wish we had TANC here, but what TANC
21 asked for cannot occur till after we've completed
22 our process.

23 HEARING OFFICER BOUILLON: It's my
24 understanding you don't get that detailed facility
25 study until you get the certification.

1 PRESIDING MEMBER KEESE: You don't get
2 the detailed study until after you get
3 certification. And I would have hoped to ask TANC
4 that. So we're going to leave it as an issue to
5 be adjudicated, but we're not delaying it.

6 MS. COTTLE: I actually have something
7 to say about that, also. TANC has indicated this
8 is an issue that they think requires adjudication,
9 but based on the specific concerns that they've
10 raised so far, we actually don't think that
11 there's any dispute that needs to be adjudicated
12 because we believe that all their concerns are
13 beyond the scope of this proceeding because they
14 relate to economic concerns and to TANC's concerns
15 about its own contractual rights.

16 HEARING OFFICER BOUILLON: We're not
17 going to rule on that tonight, nor in any
18 prehearing conference order. Once they file
19 written testimony, as with any other written
20 testimony, any of the parties is free to either
21 support it or challenge it in one manner or
22 another.

23 MS. COTTLE: And we expected that that
24 would be the case, and we understand that --

25 HEARING OFFICER BOUILLON: If we have

1 something specifically before us in that regard --

2 MS. COTTLE: -- they will file --

3 HEARING OFFICER BOUILLON: -- then we
4 can rule on it. But we don't have anything at
5 this point.

6 MS. COTTLE: Okay, we just wanted to
7 give you an indication of what we're thinking on
8 that topic.

9 PRESIDING MEMBER KEESE: It's not a
10 particular surprise. Thank you.

11 (Laughter.)

12 PRESIDING MEMBER KEESE: Okay, I think
13 we've covered the issues quite well.

14 Okay, Mr. Bouillon.

15 HEARING OFFICER BOUILLON: Yes, at this
16 point I don't know if there are any outstanding
17 data requests, or whether anybody's having any
18 problem over those.

19 Suffice to say that typically the
20 parties should try to work out data requests among
21 themselves. And I'd like to know at this point if
22 anyone has any problems with them sufficient that
23 it may affect the scheduling of these hearings.

24 MR. WOLFE: We don't anticipate it would
25 be a problem. Evidently CURE and the applicant

1 had discussed the possibility of getting some
2 facility design parameters, and it was agreed that
3 we would present you with a specific list of items
4 that we would want basically to assist us in
5 comparing the applicant's analysis of the cost of
6 dry cooling with our own analysis that we
7 undertook using vendor data.

8 And I understand we didn't actually give
9 you the list of things that we needed. But we're
10 going to do that tomorrow, with the understanding
11 that there will be a pretty rapid turnaround.
12 That would be the only outstanding issue.

13 MS. COTTLE: Well, I would just say that
14 first of all that was not our understanding of
15 what was going to happen. We have been hearing
16 from CURE that they were going to be filing some
17 kind of presentation that addresses the issue of
18 dry cooling, particularly economic issues.

19 We haven't seen anything to date. And
20 we were not aware that we were supposed to be
21 providing something to you. I'm not sure where
22 the disconnect there was.

23 MR. WOLFE: Yeah, I apologize if the
24 disconnect is on my end. I'm sitting in for the
25 normal attorney here. But evidently there's some

1 information that was submitted in a data request
2 number 1-75 that was disputed. And we reached
3 some form of understanding of what aspects of that
4 data request would be provided.

5 MS. COTTLE: I through 75? That was
6 about 300 questions.

7 MR. WOLFE: Or, I'm sorry, it's data
8 request 48. And it basically has to do with, you
9 know, steam flow through the plant. Basically the
10 underlying parameters that led the applicant to
11 conclude that it would be as expensive to
12 implement dry cooling as it concluded, in order
13 for us to be able to compare, based on the vendor
14 data that we acquired, you know. We ended up
15 doing analysis, ended up with it being about half
16 the cost that --

17 MS. COTTLE: Well, the way that all
18 played out, when we received your data requests 1
19 through 75, there were some areas where we
20 objected. And we met with Lizanne Reynolds and
21 Phyllis Fox and we worked out all the issues. And
22 we submitted two sets of supplemental responses
23 based on that discussion.

24 And our understanding, and we believed
25 we had confirmed this with Lizanne Reynolds, was

1 that our obligations on data requests 1 through 75
2 were completed in November.

3 MR. WOLFE: Okay, so you submitted
4 something --

5 MS. COTTLE: In November.

6 MR. WOLFE: -- to us, or it was
7 docketed?

8 MS. COTTLE: It was to you and it was
9 docketed.

10 MR. WOLFE: In November and your
11 understanding is that took care of --

12 MS. COTTLE: We were finished. You sent
13 us data request number 76, --

14 MR. WOLFE: Um-hum.

15 MS. COTTLE: -- asking if there was
16 anything new. And we provided a few new things.
17 And we understood our obligation with respect to
18 that data request was also complete.

19 MR. WOLFE: Do you recall if what you
20 sent in November sounds roughly like what I was
21 just attempting to describe?

22 MS. COTTLE: I believe that -- I don't
23 remember exactly what we agreed upon with respect
24 to question number 48, but my recollection is that
25 we agreed to provide something different than what

1 the question specifically asked for. And we
2 believed that we had finished that.

3 You know, the other thing is that that
4 may have been one where we believed that CURE was
5 withdrawing the request. I'd have to go back and
6 check our records, but it's one or the other.
7 Either we answered it, or we understood that CURE
8 was withdrawing it.

9 MR. WOLFE: Well, let's just say that we
10 are prepared to go forward and present our
11 analysis. And our original plan, as we said at
12 the workshop, was to do that within ten days. Our
13 hope would be to receive the same types of data
14 that we based our estimates on, that we acquired
15 from the vendor, from the applicant, which are the
16 actual parameters for this project, so that we
17 could do a meaningful side-by-side comparison
18 rather than one that was purely speculative.

19 So, I will, you know, I pledge to do my
20 best to work with Lizanne and Phyllis to make sure
21 that all communication gaps are filled, and on the
22 assumption that you did provide what, you know,
23 you, Lizanne and Phyllis agreed you would provide
24 them. Then I wouldn't anticipate a problem.

25 MR. RATLIFF: Commissioner, if I may,

1 the staff is going to be filing testimony on dry
2 cooling, that's without a doubt. I don't know if
3 the staff's going to be favoring dry cooling or
4 saying it's unnecessary.

5 But I have a feeling that that issue is
6 going to be probably one of the main issues in the
7 second round of hearings.

8 As I understand it, the information
9 that's being sought goes to the assumptions behind
10 the cost numbers that the applicant has developed
11 for the cost of dry cooling. And that would be
12 important, I think, to whatever position we take,
13 whatever that may be, as well.

14 I don't know, I haven't been able to
15 verify with our own staff exactly what information
16 we have received from you on that. And it may be
17 that we're satisfied with that.

18 But, if we don't have it, we'll
19 certainly be asking for it.

20 MS. COTTLE: Okay, and you expect you'll
21 be asking for that in a written data request?

22 MR. RATLIFF: Yes, we'll follow up with
23 a data request in early next week if we do not
24 already have the information. I was unable to
25 verify today whether we received it or not.

1 MS. COTTLE: Okay.

2 MR. WOLFE: And I guess neither was I.
3 So I'll do that, as well.

4 MS. COTTLE: Okay.

5 HEARING OFFICER BOUILLON: One of the
6 other issues that has come up in the prehearing
7 conference statements is further workshops on
8 various issues. And as I'm sure everyone is
9 aware, the Committee does not schedule nor
10 participate in those workshops. So I leave that
11 to each of you to work out with our staff. And
12 we'd certainly encourage as many workshops as can
13 be productive.

14 MR. BUELL: On the topic of workshops
15 and also data requests, I would note that there
16 are some outstanding data requests on the topic of
17 water resources that staff is expecting from the
18 applicant.

19 Of course, our ability to provide a
20 final staff assessment for water resources depends
21 on the applicant's timely response to those, which
22 today they've assured me that they're going to
23 make. But I would echo that there's probably
24 going to be a need for them to perform in order
25 for us to meet our obligations under the schedule.

1 We have discussed today the need for
2 possibly more workshops on the topic of water
3 resources, perhaps dry cooling, and also on air
4 quality. And we'll be scheduling those as the
5 parties deem appropriate.

6 HEARING OFFICER BOUILLON: The next
7 thing I'd like to tell everybody is that the next
8 step is these hearings we're talking about, that
9 is really a trial. Not really like you see on
10 television, but a real-life trial. I don't know
11 how many of you people have experience in a
12 courthouse, but the rules are somewhat looser.
13 It's slightly more informal than a trial in
14 superior court. But it is more formal than what
15 we're doing today.

16 And a trial consists of the offering of
17 evidence by way of testimony and exhibits.
18 Exhibits is anything that's in writing. Testimony
19 is anything that can be spoken.

20 If someone wants to offer testimony
21 during these hearings we're going to set a date
22 and by that date that testimony must be submitted
23 to the Committee through our docket office, and
24 served on all the other parties in writing.

25 We don't want somebody showing up at the

1 hearing and saying I want to testify about water
2 quality, and here's what I want to say. We want
3 it in writing. We're going to set a date that
4 will be several days before the hearing where it
5 will be submitted in writing.

6 That gives everyone else a chance on
7 both sides to form the cross-examination questions
8 so when they get to the hearing they know the
9 questions they want to ask.

10 The same is true of exhibits. If you're
11 going to submit an exhibit, whether it's an air
12 quality study, something about monitoring data,
13 something about a modeling process, we want to
14 know what that exhibit is. We want to have a
15 designation of that.

16 If I might use as an example of that --
17 one more thing. And if you're going to offer an
18 expert witness, and an expert witness is anybody
19 that gets up and offers an opinion, if you're
20 going to offer an opinion you have to be an
21 expert. It doesn't mean you have to have a
22 doctorate in anything. It just means you have to
23 have some special knowledge that qualifies you to
24 give that opinion.

25 And what we want from you is what those

1 qualifications are. I think, for instance, if you
2 were to look at CURE's prehearing conference
3 statement you would see attached to that statement
4 not only a description of what issues they think
5 need to be adjudicated, but you will attached to
6 that, for instance, the first one says, J. Phyllis
7 Fox, Ph.D., and then it's got her education, it's
8 got her qualifications there.

9 From that we can gather whether or not
10 she's an expert. I'm not going to commit myself
11 to anything at this point. But, the applicant has
12 done that, CURE has done that. I urge the
13 intervenors to look at CURE's because I think
14 that's probably more palatable. But the applicant
15 has also done a similar job.

16 The testimony is not included in any of
17 these prehearing conference statements, nor should
18 it be. That is detailed testimony as if you stood
19 up under oath and testified. That's what we'll
20 get from you in writing, along with a statement of
21 your qualifications. And a statement of what
22 particular issues they relate to.

23 Then when we have the hearing the
24 testimony will be offered as an exhibit, and then
25 all of the other parties will be allowed to cross-

1 examine that person on the content of their
2 written testimony.

3 Each person who is a party, whether it's
4 Burney Resource Group, Mr. Evans, Mr. Nelson on
5 behalf of the Parks and Recreation, will be
6 allowed to ask questions, and applicant, for that
7 matter. They know all this so I don't even look
8 at them. Or they should know all of this.

9 There will be no new -- nobody's going
10 to be surprised at these hearings. They may be
11 surprised at some of the cross-examination
12 questions, but they're not going to be surprised
13 with some new evidence. Nobody's going to trot
14 out some new study and say, by the way, my expert
15 just came up with this yesterday. We don't want
16 to hear that.

17 We want it to be an orderly process
18 where we have a complete record before us, handed
19 in ahead of time, so everybody's playing on a
20 level playing field.

21 Now, when those hearings are over we
22 will have a briefing schedule where you can argue
23 what all of that testimony on both sides means,
24 and what effect the cross-examination had on that
25 testimony. And whether or not somebody's opinion

1 is good or not good because they are or are not an
2 expert.

3 But that is not a subject of the
4 testimony, itself. Try to separate the facts from
5 the argument if you can. The argument comes after
6 the trial, the facts come during the trial.
7 Cross-examination should be used not to argue, but
8 to elicit the core facts.

9 MR. NELSON: I have a question.

10 HEARING OFFICER BOUILLON: Yes.

11 PRESIDING MEMBER KEESE: Mr. Nelson.

12 MR. NELSON: And thank you, those kinds
13 of questions for some of us who haven't
14 participated in these hearings before are very
15 beneficial to us.

16 One question I have. If I was to have -
17 - you know, say I'm the one that is nominated to
18 give testimony, if I have legal counsel
19 facilitating me in that testimony, they do not
20 have to be named ahead of time as people giving
21 testimony, they're just there to facilitate,
22 especially like cross-examining. That's all, you
23 know, not only acceptable but encouraged, I would
24 guess?

25 HEARING OFFICER BOUILLON: Absolutely.

1 In fact, I encourage each of you to seek legal
2 counsel. Although I have to say the Burney
3 Resource Group is doing quite well without one.

4 But, for instance, Mr. Nelson, you
5 have -- I'm sure the Parks and Recreation has a
6 legal staff. If you want their assistance in
7 preparing your testimony you should do so, and you
8 do not need to tell us ahead of time.

9 We would appreciate knowing because it
10 might affect our estimate of how long the
11 proceedings will take. Sometimes you get a
12 lawyer's mouth open, being a lawyer, it goes on a
13 little longer.

14 MS. CROCKETT: May I ask a question?

15 PRESIDING MEMBER KEESE: Yes. Marcie.

16 MS. CROCKETT: On submittal of our
17 testimony do we just briefly outline the areas
18 that they will be raising? Do you want verbatim
19 detail? How do you want this submitted?

20 HEARING OFFICER BOUILLON: I want it
21 verbatim. Let's assume you were the witness.

22 MS. CROCKETT: Okay.

23 HEARING OFFICER BOUILLON: Okay. If I
24 swore you in as a witness to tell the truth, the
25 whole truth, nothing but the truth, now what do

1 you want to say? That's what I want in writing.

2 MS. CROCKETT: Okay. Thank you.

3 PRESIDING MEMBER KEESE: The facts, only
4 the facts.

5 MS. CROCKETT: So I would not be just
6 listing our expert witness on air would be
7 discussing dispersion modeling, --

8 PRESIDING MEMBER KEESE: We want to hear
9 what they say on dispersion modeling.

10 MS. CROCKETT: But I wouldn't just list
11 the topics, I would --

12 PRESIDING MEMBER KEESE: No. Every word
13 they're going to say.

14 MS. CROCKETT: Every word they're going
15 to say. That's clear, thank you.

16 HEARING OFFICER BOUILLON: Actually that
17 would be impossible, I think, for you to prepare
18 their testimony. They would have to prepare it
19 and submit it through you.

20 MS. CROCKETT: Okay.

21 HEARING OFFICER BOUILLON: Okay? Your
22 declarations that you have submitted, for
23 instance, those are a form of testimony by and
24 large insofar as they contain actual information.
25 That's what we're looking for, like the

1 declarations you have previously submitted.

2 MS. CROCKETT: Okay.

3 HEARING OFFICER BOUILLON: And we would
4 like you also to -- I'm glad you brought that up,
5 made me think of it, the declarations that you
6 have submitted, for instance in supporting your
7 motions and other times, if those are going to be
8 part of your testimony, just for logistical
9 purposes we would like to have those anew. Even
10 if you just copy them and attach them to their
11 testimony. You know what I'm saying?

12 MS. CROCKETT: We did submit in our
13 exhibits the motions would be included. I would
14 assume the declarations would accompany those.
15 But I will make a note to make sure that they do.

16 HEARING OFFICER BOUILLON: I believe
17 attached to your prehearing conference statement
18 there is a declaration -- no, it's not, that's not
19 quite a declaration.

20 You have a letter from --

21 MS. CROCKETT: That would be --

22 HEARING OFFICER BOUILLON: -- Ellis and
23 Cook.

24 MS. CROCKETT: -- Dr. Ellis -- right.

25 That would be her projected testimony. Now in

1 looking at that, that's a great example. Are you
2 comfortable with that detail, or do you want it in
3 more detail?

4 HEARING OFFICER BOUILLON: I would think
5 in far more detail.

6 MS. CROCKETT: Far more detail, okay.

7 MS. COTTLE: If I could clarify one
8 thing. We are understanding that anything that
9 your witnesses are going to be saying at the
10 hearing will have been prefiled in writing.
11 Correct?

12 HEARING OFFICER BOUILLON: Yes. At the
13 hearing typically the way it's handled is that you
14 would hand in your testimony ahead of time. You
15 would then be asked to summarize it orally. And
16 then cross-examination would go on.

17 So, if what you have here in this letter
18 from Ms. Ellis and Mr. Cook, it's almost a
19 summary. This is what they might be allowed to
20 say at the hearing --

21 MS. CROCKETT: Okay.

22 HEARING OFFICER BOUILLON: -- but it
23 would have to be backed up by god knows how many
24 pages --

25 MS. CROCKETT: Okay.

1 HEARING OFFICER BOUILLON: -- of actual
2 testimony.

3 MS. CROCKETT: Understood.

4 PRESIDING MEMBER KEESE: All of which
5 will then be subject to cross-examination by the
6 other parties, which is why -- that is extensive.

7 MS. CROCKETT: Right.

8 PRESIDING MEMBER KEESE: The summary you
9 give puts the tone on it. It's still facts, it's
10 not argument, it's still the facts, summarized.

11 MS. CROCKETT: So what we're doing is
12 submitting the testimony so that we can prepare
13 cross-examination?

14 PRESIDING MEMBER KEESE: Exactly right.
15 You're going to get to cross-examine them.
16 They're going to get to cross-examine you.

17 MS. CROCKETT: Okay.

18 MS. MacLEOD: And, Mr. Bouillon or
19 Chairman Keese, if I may make a point, I think you
20 were trying to make clear earlier that if, in
21 fact, someone wanted to raise at the hearing
22 something that was not covered in detail in their
23 written testimony, then we would object to
24 introduction of that new matter at the hearing.

25 HEARING OFFICER BOUILLON: And it may or

1 may not be allowed. I'm not going to rule on that
2 ahead of time.

3 MS. MacLEOD: Right. So, actually your
4 direct testimony is your written testimony, and
5 the purpose of the hearings is cross-examination.

6 PRESIDING MEMBER KEESE: Correct.

7 MS. CROCKETT: Cross-examination, okay.

8 MS. MacLEOD: Thank you.

9 MS. COTTLE: We had a couple of
10 questions.

11 PRESIDING MEMBER KEESE: Thank you.
12 Lisa.

13 MS. COTTLE: Okay. First of all, we've
14 been understanding that the February 18th was a
15 firm filing date for the phase one testimony, is
16 that correct at this point?

17 HEARING OFFICER BOUILLON: It may be by
18 Monday, but it's not -- that's what we're here for
19 tonight.

20 MS. COTTLE: We've been basing that on
21 the schedule that was circulated.

22 HEARING OFFICER BOUILLON: Everything is
23 in a little bit of flux.

24 MS. COTTLE: Okay.

25 HEARING OFFICER BOUILLON: Depending on

1 what goes on here tonight. Okay?

2 MS. COTTLE: We actually had a second
3 question.

4 HEARING OFFICER BOUILLON: I don't know
5 that February the 18th is a bad date as of yet.

6 MS. COTTLE: Okay.

7 HEARING OFFICER BOUILLON: No. I'm not
8 prepared to change that right now. I have to talk
9 to Chairman Keese and Commissioner Laurie, but
10 none of the dates in the schedule are set in
11 concrete. Let me say that.

12 MS. COTTLE: Okay, just wanted to
13 clarify.

14 HEARING OFFICER BOUILLON: And we will
15 try to get that order out as quickly as possible.

16 MS. COTTLE: Okay.

17 HEARING OFFICER BOUILLON: That may
18 depend only upon the availability of the
19 transcript, and I have to see it, because before
20 we put the order out I'd like to check it against
21 the transcript to make sure --

22 MS. COTTLE: Okay.

23 HEARING OFFICER BOUILLON: -- it doesn't
24 leave something out.

25 MS. COTTLE: Just for the record, we

1 would like to have testimony on the part one
2 issues submitted on February 18th.

3 And then our second question was for
4 these issues that are uncontested, is there a way
5 that we can address these without having to have a
6 witness at hearings through the filing of a
7 declaration?

8 HEARING OFFICER BOUILLON: If it's
9 determined that there is no -- if no one has any
10 cross-examination for those witnesses, once that
11 testimony has been submitted, yes, it can be
12 submitted by stipulation. That has been done in
13 the past.

14 MS. COTTLE: Okay, and we would know
15 that after testimony is filed?

16 HEARING OFFICER BOUILLON: You would
17 know that after you submit the testimony.

18 MS. COTTLE: Okay.

19 HEARING OFFICER BOUILLON: And then you
20 would informally among yourselves make sure that
21 no one has any questions. And then inform the
22 Committee of that. And then it could be received
23 that way.

24 MS. COTTLE: Okay, thank you.

25 MR. RATLIFF: So are we going to

1 basically decide by stipulation what areas that we
2 won't produce live witnesses on, is that what you
3 would like?

4 HEARING OFFICER BOUILLON: Yes.

5 MR. RATLIFF: Okay.

6 HEARING OFFICER BOUILLON: But you can
7 submit your testimony among yourselves, and then
8 have a conference call if you want, about things
9 that you think are not in dispute. And then let
10 us know the results of that.

11 MS. COTTLE: Okay.

12 MR. RATLIFF: One further clarification
13 on the testimony. I assume that as has been true
14 in our prior cases, we will be able, on direct
15 examination, to ask our witnesses to address
16 issues raised in the testimony or public comments
17 of other people or other parties. Am I correct in
18 that?

19 HEARING OFFICER BOUILLON: Yes.

20 MR. RATLIFF: Despite the fact that it
21 could not have been addressed usually -- some of
22 these things, at least, cannot be addressed in the
23 written testimony, itself, if you follow me?

24 HEARING OFFICER BOUILLON: I'm sorry,
25 could you repeat that?

1 MR. RATLIFF: When the testimony is
2 filed, issues will be raised in the testimony of
3 other parties that we could not have always
4 anticipated. And it is the normal custom that we
5 would ask our witness to address the issues that
6 other parties have raised in our direct
7 examination of our own witness.

8 I assume that would be tolerated, but I
9 just wanted to clarify that that would be the case
10 here.

11 HEARING OFFICER BOUILLON: That
12 procedurally is the way it's done, but that's
13 really more the topic of rebuttal testimony.
14 Procedurally we handle it as part of your direct,
15 but, yes, you will still be allowed to do that.

16 MR. RATLIFF: Okay.

17 HEARING OFFICER BOUILLON: One of the
18 other matters brought up was the matter of an
19 additional prehearing conference as to some of the
20 issues which are not yet complete, such as air and
21 water and possibly transmission system
22 engineering.

23 As I understand it, both the applicant
24 and the staff agree that a further prehearing
25 conference would be desirable, is that correct

1 still?

2 MS. COTTLE: That's correct from our
3 perspective. We'd also like an opportunity to
4 file second prehearing conference statement to put
5 our witnesses and exhibits and set out the topics
6 of our testimony.

7 HEARING OFFICER BOUILLON: You agree,
8 counsel?

9 MR. RATLIFF: Yes.

10 HEARING OFFICER BOUILLON: Do you have
11 any objection to that?

12 MR. WOLFE: No, we fully support it.

13 MR. NELSON: We have no objection.

14 MS. CROCKETT: Burney Resource Group
15 does, too.

16 HEARING OFFICER BOUILLON: I read in
17 the, I believe in the prehearing conference
18 statement of the applicant, that they suggested a
19 prehearing conference on either the 23rd or 24th
20 of March, is that --

21 MS. COTTLE: That's correct.

22 HEARING OFFICER BOUILLON: I'm reading
23 from my notes, so I'm not sure.

24 MS. COTTLE: That's correct.

25 HEARING OFFICER BOUILLON: Does staff

1 have any comment on that?

2 (Pause.)

3 HEARING OFFICER BOUILLON: I would note
4 for everyone's information that the current
5 schedule calls for a part two of the FSA to be
6 issued on March 17th, so this would be nearly a
7 week later. It would be a very short turn-around
8 time, but given the fact that we want to have
9 hearings probably in April, there's not a lot of
10 slack to play with there.

11 MS. CROCKETT: Is it actually just one
12 week, or do we get a couple of extra days?

13 HEARING OFFICER BOUILLON: I'm sitting
14 here to listen.

15 MS. COTTLE: Let me see if I can address
16 that. The part two of the final staff assessment
17 is scheduled to be issued on March 17th. The way
18 the current schedule that was issued in January
19 reads, our part two testimony would be due on
20 March 31st. Both of those dates are a Friday, by
21 the way.

22 So we suggested a prehearing conference
23 on the 23rd or the 24th, which is the Thursday and
24 Friday between those two dates.

25 PRESIDING MEMBER KEESE: Understanding

1 that the conference is meant to try to flesh
2 things out, versus settle things.

3 MS. CROCKETT: Right, but we have to
4 file our prehearing conference statement prior to
5 the meeting, correct?

6 HEARING OFFICER BOUILLON: Yes, but
7 that, we can probably cut you some slack there,
8 too, and that might only be a day or two ahead of
9 time. And we'll probably try to use email to the
10 best possible advantage, so we wouldn't have to
11 worry about the U.S. mail.

12 MR. LONGSTRETH: In that case you'd
13 still be talking about maybe three working --

14 HEARING OFFICER BOUILLON: To the extent
15 that it's available to everyone.

16 MR. LONGSTRETH: Right. But you're
17 talking then about maybe three working --

18 HEARING OFFICER BOUILLON: Recognizing
19 Mr. Evans, we'd have to make some special
20 arrangements for.

21 MR. LONGSTRETH: -- three working days
22 then. You'd only be talking about three working
23 days between getting the staff report and having
24 to digest it, figure out what the issues are, what
25 your topics are and so forth.

1 That seems like -- I understand the
2 concern for the schedule, but that seems like an
3 awfully -- too quick of a turnaround time.

4 HEARING OFFICER BOUILLON: Let me tell
5 you how the schedule gets set, at least in part.

6 We're trying to work ahead and we're
7 trying to work back at the same time, and when you
8 get to the middle you end up with everything not
9 yet accomplished.

10 Our general direction from the
11 Legislature is to complete the certification
12 process within one year of the time it was deemed
13 adequate, which was on June 23rd of '99.

14 It's not an absolute requirement that we
15 do so, but it is a direction that the Committee
16 takes to heart and tries to accomplish. And it
17 certainly has been urged constantly by the
18 applicant that we reach that date.

19 Well, we can't make that date anyway
20 because there is no meeting in the second half of
21 June of the California Energy Commission to adopt
22 any final decision one way or the other.

23 So, we've skipped ahead a couple of
24 weeks and set July 12th as the date closest to
25 making this one-year period that we can.

1 Looking back from then with the notice
2 requirements we have for hearings like that, and
3 giving people time to comment on proposed
4 decisions, and trying to create time for people to
5 file briefs on the evidence, and have the
6 hearings, and file their testimony, and have a
7 prehearing conference, we end up with a very
8 narrow time in the first half of April to have the
9 hearings on this second round of issues.

10 At the same time, because the
11 requirements of our staff and some of the
12 documents over which they have no control and we
13 have no control, they can't get the final staff
14 assessment out as to those issues until March
15 17th.

16 So, between March 17th and April 14th
17 we're trying to get everything else done.

18 MR. HATHAWAY: Could I make a comment?

19 PRESIDING MEMBER KEESE: Mr. Hathaway.

20 MR. HATHAWAY: What happens to
21 individuals, as Hathaway Burney Ranch and my
22 brother and myself, is that when you condense --
23 when everything gets jammed in the middle just
24 like this one, where we have three working days to
25 comment, and then we have to use semi-

1 professionals and professionals, the cost of us
2 participating in this as a citizen becomes almost
3 prohibitive as a normal citizen.

4 Because in order for me to have the FSA
5 second part submitted to those individuals who we
6 believe have expertise, to evaluate it quickly,
7 and then we tell them we want it in, you know, we
8 need their response, and it needs to be in
9 writing, and it needs to be documented, and we
10 need to make sure they cross-reference all studies
11 and previous studies, it gets very expensive.

12 And unfortunately, as the cost goes up,
13 then the ability for myself to participate as an
14 individual becomes less and less.

15 So if I get the final staff assessment
16 on the 17th, and you give me three days to look it
17 over and make comments, I can make lots of
18 comments, you know, gut feelings, comments, but
19 we're beyond that. We have to, you know, we have
20 to have individuals that have expertise and
21 knowledge and history to comment.

22 And by the time I get the material to
23 them and get it back, you know, it's five working
24 days, or they tell you they're not going to do it.

25 HEARING OFFICER BOUILLON: First, let me

1 correct one misstatement I may have made. We're
2 not saying you have to get your comments in on
3 that final staff assessment. What we're trying to
4 do is set a second prehearing conference just to
5 find out what areas of the final staff assessment
6 you differ with. Not what those differences are.
7 I'm not asking you to submit any testimony, or
8 even any summaries of testimonies at that time,
9 because the turn-around is so short.

10 MR. HATHAWAY: So all we'd have to
11 submit is our disagreements with the statements in
12 the final staff assessment?

13 HEARING OFFICER BOUILLON: Yes. And in
14 even briefer form than you did in your prehearing
15 conference statements for this hearing.

16 MS. CROCKETT: A checklist of
17 adjudicated areas?

18 MS. COTTLE: I would also point out that
19 the final staff assessment on part 1 was issued on
20 January 24th. Prehearing conference statements
21 were due on January 27th. We're not talking about
22 anything different for phase two.

23 MR. HATHAWAY: That's right, we were
24 unable to get the documents prepared in a timely
25 manner, so they're not filed.

1 MS. CROCKETT: And unfortunately for
2 Burney Resource Group or fortunately, only a few
3 areas really required deep research. And now
4 we're talking if the FSA is any indication of what
5 air and water is going to be, the FSA on page 1
6 was a third more in depth.

7 I was just looking at the PSA on air and
8 water at 80, 85 pages. So I can expect 100 to 150
9 pages of in-detail data that we're going to have
10 to absorb. I have some deep concerns about that.

11 MS. COTTLE: I also would point out that
12 these areas that are in part two have been
13 discussed from the beginning. We've been going
14 down this path all along. We've had months of
15 discussions about this.

16 MR. HATHAWAY: And there still isn't
17 agreement on experts --

18 MS. CROCKETT: Exactly.

19 MR. HATHAWAY: -- or the outcome of the
20 studies, or -- there's still no agreement.

21 PRESIDING MEMBER KEESE: I appreciate
22 your comments, and we will definitely take them
23 into consideration. What we have been trying to
24 do here is slim down this agenda so that we have
25 removed quite a few of the issues from that final

1 process so that --

2 MR. HATHAWAY: And I greatly appreciate
3 the process that we went through.

4 PRESIDING MEMBER KEESE: -- we're going
5 to try to come down to just a number of discrete
6 issues. And it's not just air, water, noise and
7 whatever our -- and transmission. It's not.

8 We will try to have discrete, when we're
9 talking about water, we know that we're talking
10 about containment, and we know we're talking about
11 the plume.

12 So we will have a number of discrete
13 issues. And I would imagine that most of them
14 were taken care of in the PSA, were covered
15 somewhat.

16 What we're going to get is a more
17 thorough analysis, which is contingent on the air
18 district getting us something, right?

19 MR. RATLIFF: Well, the air district
20 will file its final determination of compliance.
21 I'm not actually thinking that air quality is
22 going to be so much the problem schedule-wise, as
23 water issues may be. Although I could be wrong.

24 But this condition, I feel, is that
25 water issue has been somewhat complex and it's

1 obviously important. And I don't think we have a
2 difficulty -- staff doesn't have a difficulty, or
3 at least it's certainly within our capacity to
4 turn around a prehearing conference statement
5 within five days of the filing of the testimony.
6 And we'll do that.

7 But, I'm just a little bit skittish
8 about being sure we'll meet the date on the
9 testimony. We intend to do that. I'm not saying
10 we aren't going to do that. Don't freak out on
11 me. But, we are just -- it really depends a lot
12 on getting information fast, getting it analyzed
13 fast, the information being complete enough for us
14 to use it.

15 And that's why I'm just feeling a bit
16 wary about the commitment to the schedule. But, I
17 don't think the prehearing conference is a
18 problem. And we are currently intending to meet
19 the date for the testimony, if we can just get it
20 ironed out by then.

21 HEARING OFFICER BOUILLON: One of the
22 topics for the prehearing conference held shortly
23 after that final staff assessment is issued is
24 whether or not hearings within a couple of weeks,
25 or testimony within a few days is feasible.

1 That would be a topic for a prehearing
2 conference, be a reason to have that conference.
3 So as quick as we can be prepared for that
4 prehearing conference it should be held so all the
5 parties will know where they stand and when they
6 have to submit some testimony on those issues.

7 MR. BUELL: I would like to also add
8 that I think that to allay some of the concerns of
9 the intervenors is that there's a couple things
10 that will be occurring that will help us all, I
11 think, focus on what the issues are, particularly
12 on water resources and air quality, and that's the
13 information that we expect the applicant to
14 provide in response to our data requests, will
15 help define what the applicant's proposal is.

16 And second, we'll have workshops on that
17 information. We'll be able to help focus on what
18 the issues are between the parties.

19 So it won't be as though we're coming
20 completely blind, waiting for the FSA to come out.
21 Hopefully we've had the opportunity to describe
22 where staff is coming from before we actually put
23 it in writing, and that should help focus on what
24 issues are going to be highlighted in your
25 prehearing conference statement.

1 MR. LONGSTRETH: I just want to make one
2 comment on scheduling --

3 PRESIDING MEMBER KEESE: Mr. Carroll.

4 MR. LONGSTRETH: -- the prehearing
5 conference, when you do that. As you mentioned, I
6 think one of the main values of this is to figure
7 out what's really at issue and what maybe people
8 can get to an agreement on.

9 To the extent you only give people a
10 couple of days between the staff report and when
11 the prehearing conference statements are done, and
12 the prehearing conference, you'll probably just
13 get a laundry list of saying, well, everything's
14 disputed because people will still be a little bit
15 uncomfortable about whether they really have their
16 hands over everything.

17 So, that's maybe a countervailing
18 consideration when you're setting the schedule,
19 that to the extent we have additional time,
20 there'll be more time to refine those issues and
21 maybe eliminate some at the prehearing conference,
22 which will also help in how much testimony has to
23 be prepared and how detailed it has to be, and so
24 forth.

25 PRESIDING MEMBER KEESE: Yes, I believe

1 I heard staff saying they're going to attempt to
2 have workshops in advance so that you will have a
3 clear signal of where staff is coming from before
4 you get the documentation.

5 MR. BUELL: That is correct.

6 PRESIDING MEMBER KEESE: Okay. The
7 Committee will issue a hearing order based on
8 today's proceedings that will indicate the dates
9 for evidentiary hearings on the topics that are
10 complete.

11 With regard to air quality, including
12 biology, water resources, noise, transmission and
13 those issues which we discussed today, which are
14 related to those, such as waste management and
15 public health, the hearing schedule will remain
16 flexible pending the release date for the final
17 DOC and staff's air quality review, and other
18 information that is necessary to complete the
19 record.

20 If --

21 MS. COTTLE: I'm sorry, did you include
22 transmission in that?

23 PRESIDING MEMBER KEESE: Pardon?

24 MS. COTTLE: Did you include
25 transmission in that category?

1 MR. ZISCHKE: I think the question is
2 whether you included -- it sounded like you were
3 including transmission and noise in a second set
4 of hearings --

5 PRESIDING MEMBER KEESE: I should not
6 have included transmission.

7 MS. COTTLE: Thank you.

8 MR. ZISCHKE: -- when they're disputed,
9 but still part of the first set.

10 PRESIDING MEMBER KEESE: Let's take
11 transmission out of there.

12 If there are no further questions we
13 will adjourn this conference. Any further
14 questions?

15 Thank you. Adjourned.

16 (Whereupon, at 7:30 p.m., the conference
17 was concluded.)

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CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Prehearing Conference; that it
was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
Conference, nor in any way interested in the
outcome of said Conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 7th day of February, 2000.

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